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United Press International
Frank W. Snepp talks to reporters outside Richmond court as his companion, Stephanie Cook, looks on.

Snepp Appeals Ruling on Book About Vietnam

By Paul G. Edwards
Washington Post Staff Writer

RICHMOND—The 4th U.S. Circuit Court of Appeals wrestled yesterday with the question of how former Central Intelligence Agency officer Frank W. Snepp had harmed the government by writing a book that contains no secrets and came up with contradictory answers.

U.S. District Court Judge Oren R. Lewis decided last summer that Snepp violated his contract with the CIA by publishing "Decent Interval" without agency approval of the manuscript. Lewis ordered him to give the government his profits from the book—\$60,000 at the time of the order—and told him not to write anything else about the CIA without submitting it to the agency first.

As the appeal of the Lewis decision was being argued before a three-judge appeals court panel yesterday, Judge J. Dickson Phillips clearly was troubled by the government's admission that Snepp's book about the fall of Saigon in the Vietnam war contains no classified information.

"With the government conceding that there has been no divulging of classified information... what is it we are trying to get at here?" Phillips asked.

Justice Department lawyer Robert E. Kopp argued in his answers to Phillips that "it is irrelevant that no classified information is in the book."

Kopp said Snepp should be penalized for failing to submit his manuscript to the CIA, even though no secrets were compromised. He said Snepp should be treated as an investment trustee who has deliberately mishandled funds committed to his care in a way that subjected an investor to undue risks. In such a case, he said, it is irrelevant whether the investor suffers any actual loss.

Snepp's lawyer, American Civil Liberties Union attorney Mark H. Lynch, urged the court to reject Kopp's theory of harmful risk to the government.

"This is not a securities case," he said in rebuttal. "This case involves information about the workings of the government. It goes to the core of the free flow of information that is protected by the First Amendment. You don't award damages for activities protected by the First Amendment without a finding of harm or malice."

Judge Lewis took the unequivocal position during the Snepp trial that "this is not a First Amendment case." He ruled that Snepp's failure to submit his book for approval caused the CIA "irreparable harm and loss." He said the unauthorized publication "impaired CIA's ability to gather and protect intelligence."

CIA Director Stansfield Turner and former director William E. Colby testified at the trial that the unauthorized publication might cause intelligence sources, including foreign governments, to distrust the agency's ability to keep confidences. In their appeal briefs, Snepp's lawyers label this conclusion "speculative."

Lewis's peremptory manner of handling the Snepp case caused controversy at the time of the trial and formed the basis for part of Snepp's appeal. Lynch argued briefly that Lewis should have submitted some of the issues to a jury, including the question of whether there were discrepancies in two secrecy agreements signed by Snepp while he was with the CIA.

The first agreement explicitly required agency approval of books written by agents and the second was silent on the subject. Lynch argued that the second agreement superseded the first, but Lewis ruled it did not and that Snepp was still bound by his 1968 agreement to submit manuscripts for approval.

When the court was asked to question attorneys at length on the question of which agreement applied, not both, applies to Snepp and commented at one point, "It's almost impossible to resolve."

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on "National
Security
Procedures"*

Judge Rules Fair Trial Takes Precedence Over Secrets

By Phil Weekslar
Special to The Washington Star

NEWARK, N.J. — In a decision that could inhibit future espionage prosecutions, a federal judge has ruled that the right of a defendant to a fair trial is paramount to the national defense interests of the government.

U.S. District Judge Frederick Lacey noted in his opinion yesterday that there is a risk for the government in that it may be forced to make public disclosures of information it intended to keep secret.

Lacey, however, did point out what he described as the "ironical conflict between the rights of a defendant to a fair trial and the rights of the United States to protect itself against those who might want to destroy it."

"I've weighed the matters in the scales and conclude that the defendant's right to a fair trial must prevail," Lacey said in a brief verbal opinion from the bench. "I find it paramount in the constellation embedded in the Bill of Rights."

LACEY'S RULING was issued just as the prosecution closed its case in the espionage trial of two Soviet employees of the United Nations. The defendants, Valdik A. Enger and Rudolf P. Chernyayev, are accused of paying \$20,000 to a double agent of the FBI to steal military secrets.

The constitutional issues were joined yesterday when the prosecutor, U.S. Attorney Robert Del Tufo, asked Lacey to bar the public and news media from the court during specific testimony on the classified materials allegedly passed to the defendant.

Del Tufo argued that the material in this case is of a national security nature and "the government has a right to protect itself against espionage activities."

In espionage cases, the prosecution must prove that the documents stolen involved the national defense, and thus must call witnesses to offer

specific testimony about the materials.

Despite this dilemma, Lacey said, "if we cannot say at the close of these proceedings that the defendants have had a fair trial, then the United States and the court have fallen short of what is required of all of us."

During the pretrial proceedings the government as required under criminal law had to furnish the defense photocopies of all documents it intended to introduce as evidence. However, Lacey issued an order limiting the defense attorney's — and not the defendants themselves — access to the materials.

IN STILL ANOTHER irony, most of the pretrial proceedings were held in sessions barred to the public and news media.

The problems for defendants in an espionage case was summed up by Henry Popper, one of the two attorneys for Enger, who contended that "partial exclusion of the public creates even more prejudice in the minds of the jury."

The problem for the government, according to one law enforcement official, is that "the whole purpose of trying to uncover espionage activities is to maintain the secrecy of these documents. If we have to open the books to the public, then what's the point of classifying the materials."

The classified materials in the trial concerned anti-submarine warfare plans that the government said was passed to the defendants. But on the day the Russians picked up the materials, they were arrested. There was no specific testimony on other classified materials that were allegedly compromised, although the FBI's double agents testified that the Russians had asked them to get information on Trident submarines, jet fighters and other military programs.